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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 599

GEORGE WILLIAMS,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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The Schaffer Press, Inc.—ANdover 3-6850

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To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

The petitioner, George Williams, prays that a writ of certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURT BELOW.

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, was entered on January 15, 1959, and is not reported, but

appears in the printed Appendix filed with and certified by, the Clerk of the United States Court of Appeals as a part of the record, and transmitted herewith.

The opinion of the United States Court of Appeals for the Seventh Circuit, affirming said judgment was filed September 29, 1959, and is not yet reported, but is set forth in the Appendix hereto, and in the certified copy of the record.

JURISDICTION.

The order of the United States Courts of Appeals for the Seventh Circuit, affirming the judgment of the United States District Court, for the Northern District of Illinois, Eastern Division, was filed September 29, 1959. On November 18, 1959, it was ordered that the petition for rehearing be denied. (These orders appear in the Appendix hereto.) This petition is filed within thirty days of the denial of the petition for rehearing in the United States Court of Appeals for the Seventh Circuit. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED.

1. Where it appears from the record of the trial that the Court made comments before the jury, on the testimony of witnesses and the demonstrative evidence, which tended to judge the credibility of witnesses and to weigh the evidence; did not the Court commit plain error affecting a substantial right of the defendant, the defendant's right to have these questions decided by a Jury.

2. Was not the defendant's right to a trial by Jury as guaranteed to him by Article III, Section 2 of the

Constitution of the United States and the Sixth Amendment to the Constitution of the United States violated where the Court states before the jury that it is not a reasonable inference that a Government Witness lied before the Grand Jury; where the Government Witness admitted under oath during the trial that he had testified to facts before the Grand Jury that were not true.

3. Was the corroboration of the testimony of an impeached witness that the defendant was the person he met on the dates named in the indictment; sufficient to sustain a conviction, where there was *no* corroboration of the testimony of the impeached witness that he received contraband narcotics from the defendant or at the direction of the defendant.

4. Would it not make a difference as to the sufficiency of the evidence in support of Counts 2, 4, and 5 of the indictment, if the contents of Exhibits 2A, 4A and 6A were synthesized and was not it plain error for the Court to comment before the jury: "It wouldn't make any difference. It still would be heroin—All right"

5. Where the United States Court of Appeals for the Seventh Circuit admits that the purpose of Rule 52 (b) of the Federal Rules of Criminal Procedure, 18 U.S.C.A., allows the Court to correct plain errors made in the Trial Court and then distorts the facts to avoid invoking the Rule should not this Court exercise its jurisdiction on the principle that the Federal Rules of Criminal Procedure demand that *all* factual elements of the Government's case be submitted to the jury.

6. Was not the integrity of the Government's exhibits completely destroyed so as to make them inadmissible as evidence, where,

(a) As to exhibit 2A there was direct contradiction between the Government's own witnesses as to who had possession of the exhibit and under what conditions it was kept for a period in excess of twenty-four hours.

(b) As to exhibit 4A which contained two laboratory identification numbers, one being explained away by saying the stamp machine slipped and no explanation being offered as to where the exhibit was and under what conditions it was kept from September 16, 1958 until it was delivered to the United States Chemist at 12:03 p.m. on September 17, 1958, a period of approximately twenty-four hours.

(c) As to Exhibit 6A which laid around the laboratory of the United States Chemist, to which six (6) persons had access for six days from October 16, 1958 to October 22, 1958; was opened October 22, 1958 and laid around the laboratory open and not sealed from October 22, 1958 to October 23, 1958.

(d) As to all of the exhibits where it was established that morphine can be synthesized and there was no proof as to whether Exhibits 2A, 4A, and 6A were synthetic or derivatives of the plant opium.

STATEMENT OF THE CASE.

The indictment consisted of five counts (App. 3-6). Count One charged that on or about September 4, 1958 at Chicago, Illinois in the Northern District of Illinois, Eastern Division, George Williams, defendant herein, did unlawfully and wilfully sell to William Mattingly for the sum of One Hundred Forty Dollars ($140.00) a quantity of a certain narcotic drug, to-wit: approximately 293 grains of heroin, not in pursuance of a written order from the said William Mattingly, on a form, issued in blank for that purpose by the Secretary of the Treasury of

the United States or any delegate thereof; in violation of Section 4705 (a) of the Internal Revenue Code of 1954, as amended by the Narcotic Control Act of 1956. Count three is the same as Count One, except that it alleged the sale of 820 grains of heroin on or about September 16, 1958.

Count two charged that on or about September 4, 1958 at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, George Williams, defendant herein, did then and there fraudulently and knowingly receive, conceal and facilitate the transportation and concealment of a quantity of a certain narcotic drug, to-wit: approximately 293 grains of heroin, which had been previously imported into the United States contrary to law, knowing the same to have been so unlawfully imported; in violation of Section 174, Title 21, United States Code, as amended by the Narcotics Control Act of 1956. Count four is the same as Count two except that it charges that on September 16, 1958, the defendant received, concealed and facilitated the transportation and concealment of 820 grains of heroin. Count five is the same as counts two and four except that it charges that on October 16, 1958 the defendant, received, concealed and facilitated the transportation and concealment of 618 grains of heroin.

No motion was made to quash the indictment. However, originally the indictment consisted of six counts. Prior to trial the Government of its own motion, moved to dismiss Count five of the indictment and Government's motion was granted and Count five of the indictment was dismissed. Count six was renumbered Count five.

The original Count five, dismissed on the Government's Motion, charged that on or about October 16, 1959, at Chicago, Illinois in the Northern District of Illinois,